

J-10

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT,
COUNTY OF UTAH, STATE OF UTAH.

Provo Reservoir Company,
a corporation,

Plaintiff,

vs.

Provo City, et al.

Defendants.

ANSWER OF LEVI N. NORTH.

Now comes Levi N. North successor in interest of Eli Dillen, one of the defendants in the above entitled action and in answer to the complaint of the plaintiff in file herein admits, denies and alleges as follows:

1. Defendant has no information or belief sufficient to enable him to otherwise answer and upon that ground denies paragraph one of said complaint and this defendant denies paragraphs 28, 29, 29a, 29b, 29c, 29d, 29e, 30, 31, 32, 33, 38, 39, 35 and 36 of said complaint.

This defendant denies generally and specifically each and every allegation in the plaintiff's complaint contained, not herein specifically admitted.

Defendant admits paragraphs two to twenty-eight inclusive, and admits paragraphs 34 and 37 of said complaint.

Further answering said complaint, as a defense thereto and as grounds for affirmative relief this defendant alleges as follows:

1. That the defendant is the owner in fee of one hundred sixty acres of land in Wasatch County, State of Utah, and adjacent to said Provo River, which land was and still is barren and unproductive of agricultural crops without artificial irrigation, but, when irrigated said lands produce abundantly all kinds of agricultural crops.
2. That more than thirty years ago this defendant, his grantors and predecessors in interest, for the purpose of reclaiming said land from its then barren condition and rendering it productive and valuable, by means of dams and ditches diverted and appropriated large quantities of the therefore unappropriated waters of the said Provo River and its tributaries to and upon said lands for irriga-

734

tion and domestic uses and purposes, and thereb caused said lands to produce vast quantities of agricultural crops and to become of great value; that at the time said water was diverted from said river by this defendant his grantor and predecessor, as aforesaid the same had not been appropriated by any other person or persons whomsoever.

3. That this defendant, his grantors and predecessors in interest have continued from year to year during the irrigation season of each and every year from the time of the first diversion of said waters to use and apply the same upon the aforesaid lands for irrigation purposes; that the irrigation season commences about the 15th day of March and ends about the first day of November of each and every year.

4. That the quantity of water of said river and its tributaries to which this defendant is entitled and which has been and is necessarily used by the defendant, his grantors and predecessors in interest since the first appropriation thereof as above set forth is a volume of water flowing one half of a cubic foot per second of time.

5. That this defendant, his grantors and predecessors in interest have for more than thirty years used all of said waters so originally appropriated as aforesaid, openly, peaceably, notoriously, uninterruptedly and avowedly as against all the world, and particularly the plaintiff herein, and said use has been and is reasonably necessary for the purposes herein set forth.

6. That on the 6th day of May, 1890, in the District Court of the Fourth Judicial District of the State of Utah, sitting in and for Wasatch County, in an action wherein the Wasatch Irrigation Company and others were plaintiffs and Edward Fulton and others were defendants, wherein the waters of said Provo River were involved, a decree was made and entered wherein this defendant and his predecessors in interest were decreed such amount of the waters of said river as was necessary to irrigate his said land up to about the first day of July in each year, during what is known as

the high water period, and after the said high water period was gone then this defendant and his predecessors were awarded by said decree one half of a cubic foot of water per second and that said decree is now in full force and effect, and this defendant claims as successor to Ed. Dillon all the water distributed by said decree to said Ed. Dillon.

7. That ~~sixting~~ the plaintiff claims and asserts some right and interest in and to the said waters and river bed adverse to this defendant; and the plaintiff has heretofore diverted said waters from this defendant, and used said river bed without authority and in violation of the rights of the defendant's rights, and the defendant is informed and believes and therefore alleges that the plaintiff threatens to and will, unless restrained by decree of this court continue such unlawful and wrongful diversion of the said waters and use said river bed to the great damage and injury of this defendant.

WHEREFORE, defendant prays judgment:

1. That the plaintiff take nothing by its action herein.
2. That the defendant be adjudged and decreed to be the owner and entitled to the use of a volume and quantity of the waters of said river flowing one half of a cubic foot per second in his ditches without interruption, and that the defendant's title thereto be declared good and valid and that the same be quieted as against the plaintiff and that the plaintiff be forever restrained, and enjoined from asserting any claim whatsoever of, in or to said waters and from diverting and obstructing the same.
3. That the rights of the defendant as successor to Ed. Dillon as fixed by the decree of this court of May 6th, 1899; that said decree generally known as "Tulton Decree" be confirmed and that so much of the water of said river be decreed to the defendant as is necessary to irrigate his land as herein set forth and for domestic use.
4. Defendant prays for general relief.
5. Defendant prays for his costs herein expended.

732

J.H. McDonald
Attorney for the Defendant.

State of Utah,
County of Wasatch.

J. H. Mc Donald being duly sworn on oath deposes and says that he is attorney for defendant above named and makes this verification for and on behalf of said defendant for the reason that said defendant is absent from the county in which this action is brought and for the further reason that affiant has in his possession a copy of the "Fulton Decree" upon which the above named defendant claims his rights together with a stipulation in said cause: That affiant has read the foregoing answer and knows the contents thereof and that the matters stated therein are true to the best knowledge, information and belief of the deponent.

J.H. McDonald

Subscribed and sworn to before me this 28th day of January, 1918.



Harry Wolff
Notary Public.

MY COMMISSION EXPIRES DECEMBER 20TH, 1944.

Copy served Jan 29- 1908
T D H

David L Brath
of Counsel for Plaintiff

231

2888

Provo Reservoir Co.
a corporation.

vs

Provo City, et al
Answer of
Lewis M. North.

IN THE DISTRICT COURT OF
UTAH COUNTY, STATE OF UTAH
CITY, D. C. No. 20-1000
Date 11/14/1911

Chancery

Deputy

L. E. Bupperson
A. R. Hinckley